

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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NATIONAL ASSOCIATION  
OF CHAIN DRUG STORES,

and

NATIONAL COMMUNITY  
PHARMACISTS ASSOCIATION

Plaintiffs,

v.

THE HONORABLE  
TOMMY G. THOMSON,

and

THOMAS A. SCULLY

Defendants.

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AMERICAN PHARMACEUTICAL  
ASSOCIATION

Applicant-Intervenor

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Civil Action No. 01-1554 (PLF)

MEMORANDUM OPINION TO CLARIFY  
ORDER STAYING PROCEEDINGS

On November 5, 2001, the Court issued an order granting defendants' motion for a stay of proceedings. Contrary to certain media reports,<sup>1</sup> this order did not lift the preliminary

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<sup>1</sup> See Washington Post, November 8, 2001, at A4 (available at <http://www.washingtonpost.com/wp-dyn/articles/A59111-2001Nov7.html>) ("A federal court has ruled that Medicare can move forward with its plans to promote private pharmacy discount cards . . . U.S. District Judge Paul L. Friedman this week lifted an injunction he granted in September that prevented the start of the program.").

injunction that the Court entered against defendants on September 11, 2001. Rather, the Court granted a stay of these court proceedings in reliance upon defendants' express representations that they will continue to comply with the injunction and will not take steps to implement the Medicare Rx Discount Card Program that was enjoined by this Court. See Defendants' Motion for a Stay of Proceedings at 2; Defendants' Reply Memorandum in Support of Defendants' Motion for a Stay of Proceedings at 4 ("Def's Reply") ("HHS is no longer implementing the program it announced in July; indeed, there will be no program to implement until the agency issues a final policy. The substance of that policy is very much in flux . . .").

HHS is not pursuing its original plan. Instead, HHS will be proposing a new policy on the issue, which will be published for comment. As defendants have stated, "HHS is effectively withdrawing the program announced in July and seeking the views of all interested parties on how to proceed from here." Def's Reply at 2. Defendants further point out that "there will be ample opportunity to revisit the legal issues that have been raised in this matter" if and when another policy is issued. Def's Reply at 2. Finally, the Court noted in its November 5 order that the stay of proceedings will continue only "while [HHS] submits its proposed policy for notice and comment." See Order of November 5, 2001, at 2. Plaintiffs are free to return to court at any time after such a proposal is submitted.

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PAUL L. FRIEDMAN  
United States District Judge

DATE: